149 U.S. 698

CASE No. 15316

RECORD, CHINESE REMOVAL CASE.

CASE No. 2.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM No. 1346

WONG QUAN,
Appellant,

vs.

THE UNITED STATES and JOHN W. JACOBUS, individually and as Marshal of the United States in and for the Southern District of New York,
Respondents.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED MAY 8, 1893.

C. G. BURGOYNE, Cor. Centre and Walker Sts., New York.

Case No. .

Record, Chinese Removal Case.

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United States Circuit Court,

SOUTHERN DISTRICT OF NEW YORK.

In the Matter of The Application of Wong Quan for a Writ of *Habeas Corpus*.	Case No. 2.

To the Honorable the Circuit Court of the United States in and for the Southern District of New York in the Second Circuit:

And now comes Wong Quan, above named, and makes this his petition and complaint to this Honorable Court, and respectfully shows:

I. That your petitioner is a person of the Chinese race, born in China, and not a naturalized citizen of the United States, and that at all the times hereinafter mentioned, and more especially at the time of the passage of the Act of Congress approved May 5th, 1892, and entitled "An Act to prohibit the coming of Chinese persons into the United States," he was, always has been, and still is, a Chinese laborer within the limits of the United States, and entitled to remain in the United States, in that he was within the United States at the time of the passage of the Act of Congress approved May 6th, 1882, and entitled "An Act to

execute certain treaty stipulations relating to Chinese," and has never thereafter, and up to the time of making this his petition been without the United States, and that he now resides, and has resided for more than one year last past, at No. 5 Mott street, in the City and County and State of New York in the Southern District of New York, and within the Second District for the collection of Internal Revenue in the State of New York.

II. That your petitioner on the 17th day of November, 1880, the day the treaty between the United States and China concerning immigration was concluded and signed, was within the United States, and was under the terms of said treaty accorded all the rights, privileges, immunities and exemptions which were then accorded to the citizens and subjects of the most favored nation, and prior to said last-named day, and in or about the month of July, 1879, had come to the United States with the intention of remaining and taking up his permanent residence therein, and with no definite intention of returning to China, and at the time of said treaty had become and has ever since been a permanent resident of the United States under and in pursuance of the invitation extended to him and at that time to all other Chinamen under the provisions of the fifth and sixth articles of the additional articles to the treaty between the United States of America and the Ta Tsing Empire of the 18th of June, 1858, concluded and signed on the 28th day of July, 1868 (Burlingame Treaty), which then and there declared that the high contracting parties "cordially recognize the inherent and inalienable right of man to change his home and allegiance, and also the mutual advantage of the free migration and emigration of their citizens and subjects respectively from the one country to the other, for purposes of curiosity, of trade, or as permanent residents," and further declared that "Chinese subjects * * * re-

siding in the United States shall enjoy the same privileges, immunities and exemptions in respect to * * * residence as may there be enjoyed by the citizens or subjects of the most favored nation."

III. That your petitioner, since the passage of the said Act of Congress of May 5th, 1892, has not applied to the Collector of Internal Revenue of the district wherein he has resided during said time for a certificate of residence as is required by the 6th section of said Act of Congress last above referred to, and is now and always has been without such certificate of residence.

IV. That heretofore, and on this the 6th day of May, 1893, in the City of New York, within the Southern District of New York, your petitioner was arrested without any writ or warrant by John W. Jacobus, the Marshal of the United States in and for the Southern District of New York, on the ground that he was a Chinese laborer found by him, the said Marshal, within the jurisdiction of the United States after the expiration of one year from the 5th day of May, 1892, without the certificate of residence required by said 6th section of said Act of Congress, and was thereafter taken by said Marshal before the Honorable ADDISON BROWN, a United States District Judge.

V. That the said United States Judge, without any hearing of any kind, thereupon ordered that your petitioner be remanded to the custody of the Marshal in and for the Southern District of New York, and deported forthwith from the United States, as is provided in said Act of May 5th, 1892, all of which more fully appears by said order, a copy of which is hereto annexed and made a part hereof, marked " Exhibit A."

VI. That your petitioner is detained and restrained of his liberty by and in the custody of John W. Jaco-

bus, the Marshal of the United States in and for the Southern District of New York, under and by color of the authority of the United States, wrongfully and unlawfully as your petitioner is informed and verily believes and in violation of the provisions of the Constitution of the United States and of the laws thereof, and of the various treaties made and entered into between the United States of America and the Chinese Empire.

VII. That he has not been apprehended and is not detained by virtue of any judgment, order or decree or other judicial process of any court other than the said order of the said United States Judge heretofore made on this the 6th day of May, 1893, and that he is now detained by virtue of the alleged claim and authority given to the said John W. Jacobus, the Marshal of the United States in and for the Southern District of New York, by and under said order made by said Honorable ADDISON BROWN in pursuance of the provision of the 6th section of said Act of Congress approved May 5th, 1892, stating that after the expiration of one year from the day last referred to any Chinese laborer, who shall be found within the jurisdiction of the United States without the certificate of residence required by said 6th Section of the Act of May 5th, 1892, may be arrested by any United States Marshal and taken before a United States Judge, whose duty it shall be to order that he be deported from the United States, unless he shall clearly establish to the satisfaction of said Judge that by reason of accident, sickness or other unavoidable cause he has been unable to procure his said certificate of residence and to the satisfaction of the Court, and by at least one credible white witness that he was a resident of the United States at the time of the passage of the Act of May 5th, 1892.

VIII. That, as your petitioner is informed and verily believes, his detention by the said John W. Jacobus,

the United States Marshal in and for the Southern District of New York, by and under the direction of the order of said United States Judge, is without jurisdiction and void and unconstitutional, and that your petitioner is restrained of his liberty without due process of law and against his rights under the Constitution of the United States, and the laws thereof and the various treaties between the United States of America and the Chinese empire, and unlawfully and without authority under the guise and color of proceedings against him for the commission of the alleged offense against the provisions of the said 6th Section of the said Act of Congress of May 5th, 1892, to wit, of not having applied to the Collector of Internal Revenue of his district for a certificate of residence and of now being without such certificate of residence, which said alleged offense is not, as this petitioner is informed and verily believes, any offense whatever, in that the whole of said 6th Section of said Act of Congress of May 5th, 1892, is unconstitutional, void and of no effect.

XI. And your petitioner further says that no previous application for a writ of *habeas corpus* has been made by him to this or any other Court or Judge.

Wherefore, your petitioner prays that this Honorable Court will order a writ of *habeas corpus* to be issued out of this Court to said John W. Jacobus, the Marshal of the United States in and for the Southern District of New York, requiring him to forthwith produce the body of your petitioner before this Honorable Court, and there to abide what shall be ordered by this Honorable Court in the premises, and in the meantime your petitioner prays that he may be committed to the custody of his counsel.

And as in duty bound your petitioner will ever pray.

his
WONG X QUAN.
mark

Witness :
GUY MAINE.

bus, the Marshal of the United States in and for the Southern District of New York, under and by color of the authority of the United States, wrongfully and unlawfully as your petitioner is informed and verily believes and in violation of the provisions of the Constitution of the United States and of the laws thereof, and of the various treaties made and entered into between the United States of America and the Chinese Empire.

VII. That he has not been apprehended and is not detained by virtue of any judgment, order or decree or other judicial process of any court other than the said order of the said United States Judge heretofore made on this the 6th day of May, 1893, and that he is now detained by virtue of the alleged claim and authority given to the said John W. Jacobus, the Marshal of the United States in and for the Southern District of New York, by and under said order made by said Honorable ADDISON BROWN in pursuance of the provision of the 6th section of said Act of Congress approved May 5th, 1892, stating that after the expiration of one year from the day last referred to any Chinese laborer, who shall be found within the jurisdiction of the United States without the certificate of residence required by said 6th Section of the Act of May 5th, 1892, may be arrested by any United States Marshal and taken before a United States Judge, whose duty it shall be to order that he be deported from the United States, unless he shall clearly establish to the satisfaction of said Judge that by reason of accident, sickness or other unavoidable cause he has been unable to procure his said certificate of residence and to the satisfaction of the Court, and by at least one credible white witness that he was a resident of the United States at the time of the passage of the Act of May 5th, 1892.

VIII. That, as your petitioner is informed and verily believes, his detention by the said John W. Jacobus,

the United States Marshal in and for the Southern District of New York, by and under the direction of the order of said United States Judge, is without jurisdiction and void and unconstitutional, and that your petitioner is restrained of his liberty without due process of law and against his rights under the Constitution of the United States, and the laws thereof and the various treaties between the United States of America and the Chinese empire, and unlawfully and without authority under the guise and color of proceedings against him for the commission of the alleged offense against the provisions of the said 6th Section of the said Act of Congress of May 5th, 1892, to wit, of not having applied to the Collector of Internal Revenue of his district for a certificate of residence and of now being without such certificate of residence, which said alleged offense is not, as this petitioner is informed and verily believes, any offense whatever, in that the whole of said 6th Section of said Act of Congress of May 5th, 1892, is unconstitutional, void and of no effect.

XI. And your petitioner further says that no previous application for a writ of *habeas corpus* has been made by him to this or any other Court or Judge.

Wherefore, your petitioner prays that this Honorable Court will order a writ of *habeas corpus* to be issued out of this Court to said John W. Jacobus, the Marshal of the United States in and for the Southern District of New York, requiring him to forthwith produce the body of your petitioner before this Honorable Court, and there to abide what shall be ordered by this Honorable Court in the premises, and in the meantime your petitioner prays that he may be committed to the custody of his counsel.

And as in duty bound your petitioner will ever pray.

his
WONG X QUAN.
mark

Witness :
GUY MAINE.

SOUTHERN DISTRICT OF NEW YORK, ss.:

WONG QUAN, being duly sworn, deposes and says:

That he is the petitioner and complainant hereinbefore named; that he has heard read and translated to him the foregoing petition and complaint, and knows the contents thereof, and that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and that as to those matters he believes it to be true.

his
WONG X QUAN.
mark

Witness:
GUY MAINE.

Subscribed and sworn to before me this 6th day of May, 1893.

JOHN E. KENNEDY,
Notary Public.

[SEAL.]

Exhibit A.

IN THE MATTER
OF
The Arrest and Deportation of WONG QUAN, a Chinese laborer.

WONG QUAN, a Chinese laborer, having been arrested in the City of New York on the 6th day of May, 1893, and brought before me, a United States Judge, by John W. Jacobus, the Marshal of the United States in and for the Southern District of New York, as being a Chinese laborer found within the jurisdiction of the United States after the expiration of one year from the passage of the Act of Congress

approved on the 5th day of May, 1892, and entitled "An Act to prohibit the coming of Chinese persons into the United States" without having the certificate of residence required by said Act and the said Wong Quan having failed to clearly establish to my satisfaction that by reason of accident, sickness or other unavoidable cause he had been unable to procure the said certificate, or that he had procured such certificate and that the same had been lost or destroyed :

Now, on motion of Edward Mitchell, the United States Attorney in and for the Southern District of New York, it is

Ordered, that the said Wong Quan be, and he hereby is, remanded to the custody of the said John W. Jacobus, the United States Marshal in and for the Southern District of New York, and it is further

Ordered, that the said Wong Quan be deported from the United States of America in accordance with the provisions of said Act of Congress, approved on the 5th day of May, 1892.

Dated New York, May 6, 1893.

ADDISON BROWN,
United States District Judge for the Southern District of New York.

[ENDORSED:] U. S. Circuit Court, Southern District of New York. In the Matter of the Application of Wong Quan for a Writ of *Habeas Corpus*. Petition for a writ of *Habeas Corpus*. Maxwell Evarts, Attorney for Petitioner, 23 Broad Street, New York City. U. S. Circuit Court. Filed May 6th, 1893. John A. Shields, Clerk.

At a Stated Term of the Circuit Court of the United States in and for the Southern District of New York in the Second Circuit held at the Court Rooms thereof in the Post-office Building in the City of New York on the 6th day of May, 1893.

Present—The Honorable E. Henry Lacombe, Circuit Judge.

In the Matter

of

The Application of Wong Quan for a Writ of *Habeas Corpus*.

On reading and filing the annexed petition verified by Wong Quan on this the 6th day of May, 1893, and on motion of Maxwell Evarts, the attorney for the petitioner, it is

Ordered that a writ of *habeas corpus* issue directed to John W. Jacobus, the Marshal of the United States in and for the Southern District of New York, as prayed for in said petition, and that said writ of *habeas corpus* be returned forthwith together with the return thereto of the said John W. Jacobus, Marshal as aforesaid, on this the 6th day of May, 1893, at 10 o'clock in the forenoon or as soon thereafter as counsel can be heard, at a Stated Term of this Court to be held at the Post-office Building in the City, County and State of New York, then and there to be heard and determined and the petitioner herein disposed of as law and justice may require.

E. Henry Lacombe.

[ENDORSED:] U. S. Circuit Court, Southern District of New York. In the Matter of the Application of Wong Quan for a Writ of *Habeas Corpus*. Order for Writ of *Habeas Corpus*. Maxwell Evarts, Attorney for Petitioner, 23 Broad Street, New York City. U. S. Circuit Court. Filed May 6th, 1893. John A. Shields, Clerk.

THE PRESIDENT OF THE UNITED STATES to JOHN W. JACOBUS, The Marshal of the United States in and for the Southern District of New York, GREETING:

We command you that you have the body of Wong Quan, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention by whatsoever name said Wong Quan shall be imprisoned and detained by you, before a Stated Term of the Circuit Court of the United States in and for the Southern District of New York, to be held forthwith in the Post-office Building in the City, County and State of New York at ten o'clock in the forenoon of this the 6th day of May, 1893, to do and receive what shall then and there be considered and determined concerning the said Wong Quan, and have with you then and there this writ.

Witness, Honorable MELVILLE W. FULLER, Chief-Justice of the United States, on the 6th day of May, 1893.

JOHN A. SHIELDS,
Clerk.

MAXWELL EVARTS,
Attorney for Petitioner,
23 Broad Street,
N. Y. City.

[ENDORSED :] U. S. Circuit Court, Southern District of New York. In the Matter of the Application of Wong Quan for a Writ of *Habeas Corpus*. Writ of *Habeas Corpus*. Maxwell Evarts, Attorney for Petitioner, 23 Broad Street, New York City. Allowed May 6, 1893. E. Henry Lacombe, U. S. C. J. U. S. Circuit Court. Filed May 6th, 1893. John A. Shields, Clerk.

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Application of WONG QUAN for a Writ of *Habeas Corpus*.

In obedience to the writ of *habeas corpus* heretofore issued in the above-entitled matter, I, the Marshal of the United States in and for the Southern District of New York, do herewith make return of the body of Wong Quan, the petitioner herein, and hereby do certify to the Honorable Court the true cause and warrant for the arrest and detention by me of said Wong Quan to be the order of the United States Judge, the Honorable ADDISON BROWN, dated this 6th day of May, 1893, which is hereto annexed and made a part of this my return.

Dated New York City, May 6th, 1893.

JOHN W. JACOBUS,
U. S. Marshal.

In the Matter

of

The Arrest and Deportation of Wong Quan, a Chinese laborer.

Wong Quan, a Chinese laborer, having been arrested in the City of New York on the 6th day of May, 1893, and brought before me, a United States Judge, by John W. Jacobus, the Marshal of the United States in and for the Southern District of New York, as being a Chinese laborer found within the jurisdiction of the United States after the expiration of one year from the passage of the Act of Congress, approved on the 5th day of May, 1892, and entitled "An Act to prohibit the coming of Chinese persons into the United States," without having the certificate of residence required by said act, and the said Wong Quan having failed to clearly establish to my satisfaction that, by reason of accident, sickness or other unavoidable cause, he had been unable to procure the said certificate, or that he had procured such certificate and that the same had been lost or destroyed;

Now, on motion of Edward Mitchell, the United States Attorney in and for the Southern District of New York, it is

Ordered, that the said Wong Quan be, and he hereby is, remanded to the custody of the said John W. Jacobus, the United States Marshal in and for the Southern District of New York; and it is further

Ordered, that the said Wong Quan be deported from the United States of America, in accordance with the provisions of said Act of Congress approved on the 5th day of May, 1892.

Dated New York, May 6th, 1893.

Addison Brown,
United States District Judge for the Southern District of New York.

[ENDORSED :] U. S. Circuit Court, Southern District of New York. In the Matter of the Application of Wong Quan for a Writ of *Habeas Corpus*. Return to Writ of *Habeas Corpus*. U. S. Circuit Court. Filed May 6th, 1893. John A. Shields, Clerk.

At a Stated Term of the Circuit Court of the United States, in and for the Southern District of New York, held at the Court Rooms thereof, in the United States Court and Post-office Building, in the City of New York, on the 6th day of May, 1893.

Present — HONORABLE E. HENRY LACOMBE, Circuit Judge.

IN THE MATTER

OF

The Application of WONG QUAN for a Writ of *Habeas Corpus*.

Upon reading and filing the petition of Wong Quan, verified the 6th day of May, 1893, and addressed to this Court, praying for the issue of a writ of *habeas corpus* directed to John W. Jacobus, the United States Marshal in and for the Southern District of New York, and the writ of *habeas corpus* thereupon and in pursuance of said petition duly issued and directed to the said John W. Jacobus, the United States Marshal, and the return to said writ of *habeas corpus* made by said United States Marshal, certifying to this Court the true cause of the detention by him of said WongQuan :

Now, after hearing Maxwell Evarts, the attorney for the petitioner, in support of an application for his discharge from custody, the said Wong Quan having been produced before this Court by the said United States Marshal in obedience to said writ of *habeas corpus*, and after hearing Edward Mitchell, the United States Attorney in and for the Southern District of New York, in opposition thereto, and in support of an application to remand said Wong Quan to the custody of the said United States Marshal, it is

Ordered, that said writ of *habeas corpus* heretofore issued in the above-entitled matter on this 6th day of May, 1893, directed to John W. Jacobus, the United States Marshal in and for the Southern District of New York, be, and the same hereby is, dismissed. And it is further

Ordered that said Wong Quan be, and he hereby is, remanded to the custody of the said John W. Jacobus, the United States Marshal in and for the Southern District of New York.

E. HENRY LACOMBE.

[ENDORSED:] U. S. Circuit Court, Southern District of New York. In the Matter of the Application of Wong Quan for a Writ of *Habeas Corpus*. Order dismissing writ of *habeas corpus*. Edward Mitchell, United States Attorney. U. S. Circuit Court. Filed May 6th, 1893. John A. Shields, Clerk.

UNITED STATES OF AMERICA, } ss. :
Southern District of New York, }

Be it remembered, that on the 6th day of May, in the year of our Lord one thousand eight hundred and ninety-three, before me, JOHN A. SHIELDS, the Clerk of the Circuit Court of the United States in and for the Southern District of New York, in the Second Circuit, personally came Wong Quan and Kiliaen Van Rensselaer, and severally acknowledged themselves to owe to the United States of America, that is to say, the said Wong Quan the sum of five hundred dollars, and the said Killiaen Van Rensselaer the sum of five hundred dollars, separately, to be levied and made of their respective goods and chattels, lands and tenements to the use of the said United States of America, if default should be made in the condition following, to wit :

WHEREAS, on the 6th day of May, 1893, Wong Quan was arrested in the City of New York by John W. Jacobus the United States Marshal in and for the Southern District of New York, in pursuance of the provisions of Section 6 of the Act of Congress, approved on the 5th day of May, 1892, and entitled "An act to prohibit the coming of Chinese persons into the United States," in that and because the said Wong Quan was a Chinese laborer and was thereupon found by the said United States Marshal within the jurisdiction of the United States without the certificate of residence required by the 6th Section of said Act of Congress ; and

WHEREAS, thereafter and on said last-named day the said Wong Quan was taken by said Marshal before the Honorable ADDISON BROWN, a United States Judge, and an order thereupon made by said Judge directing that the said Wong Quan be remanded to the custody of said Marshal and be deported from the United States, and

WHEREAS, thereafter and on the 6th day of May, 1893, the said Wong Quan filed a petition in the United

States Circuit Court in and for the Southern District of New York, addressed to said Court, and praying for the issue of a writ of *habeas corpus* to release him from the custody of said Marshal, which said writ was thereupon issued by said Circuit Court ; and

WHEREAS, afterwards and on said 6th day of May, 1893, the said Circuit Court having considered said petition and writ of *habeas corpus* and the return of the said Marshal thereto certifying to said Court the true cause of the detention of the said Wong Quan, did order the said writ of *habeas corpus* so issued to be dismissed, and the said Wong Quan to be remanded to the custody of the said Marshal of the United States ; and

WHEREAS, from said order dismissing the said writ of *habeas corpus*, and remanding the said Wong Quan to the custody of the said Marshal, the said Wong Quan did thereupon pray an appeal to the Supreme Court of the United States ; and

WHEREAS, simultaneously with said appeal, the said Wong Quan did make an application to said Circuit Court to be admitted upon recognizance pending and until the determination of said appeal, which said application of the said Wong Quan to be admitted in bail was then and there allowed upon the said Wong Quan entering into a recognizance with the United States of America in the sum of five hundred dollars, with sufficient surety as conditioned herein.

Now, therefore, the condition of this recognizance is such that if upon the judgment of the Supreme Court of the United States upon said appeal from the final decision of said Circuit Court of the United States discharging said writ of *habeas corpus*, and remanding the said Wong Quan to the custody of the United States Marshal as aforesaid the said Wong Quan shall personally appear before said Circuit Court whenever and as soon as a judgment upon the mandate of the said Supreme Court be entered in said Circuit Court, and then and there surrender himself to the said Marshal and abide the

order of the said Circuit and Supreme Courts, then this recognizance shall be void; otherwise said recognizance shall remain in full force and virtue.

his
WONG X QUAN. [L. S.]
mark

KILIAEN VAN RENSSELAER. [L. S.]

Acknowledged before me the day and year first above written.

JOHN A. SHIELDS,
U. S. Commissioner, S. D. of N. Y.

SOUTHERN DISTRICT OF NEW YORK, ss.:

KILIAEN VAN RENSSELAER, of No. 134 West 79 Street, in the City of New York, being duly sworn, deposes and says that he is worth the sum of one thousand dollars over and above his just debts and liabilities.

KILIAEN VAN RENSSELAER.

Sworn to before me this 6th day of May, 1893.

JOHN A. SHIELDS,
U. S. Commissioner, S. D. N. Y.

[ENDORSED:] U. S. Circuit Court, Southern District of New York. In the Matter of the Application of Wong Quan for a Writ of *Habeas Corpus*. Recognizance Pending Appeal from Order of May 6th, 1893, Dismissing Writ of *Habeas Corpus*. U. S. Circuit Court. Filed May 6th, 1893. John A. Shields, Clerk.

SUPREME COURT OF THE UNITED STATES.

In the Matter

of

The Application of Wong Quan for a Writ of *Habeas Corpus*.

Wong Quan,
Appellant and Plaintiff in Error,

vs.

The United States of America and John W. Jacobus, individually and as the Marshal of the United States in and for the Southern District of New York,
Respondents and Defendants in Error.

Afterwards, to wit, on the 10th day of May, 1893, at the October Term for the year one thousand eight hundred and ninety-two of the Supreme Court of the United States, at the Capitol, in the City of Washington, in the District of Columbia, comes the said Wong Quan by Joseph H. Choate, J. Hubley Ashton and Thos. D. Riordan, his attorneys, and says that in the record and proceedings in the above-entitled matter there is manifest error in this, to wit:

First. That the Circuit Court of the United States in and for the Southern District of New York, in the Second Circuit, erred in not holding, adjudging and determining that the Sixth Section of the Act of

Congress approved on the 5th day of May, 1892, and entitled "An Act to prohibit the coming of Chinese persons into the United States" under and in pursuance of the provisions of which the petitioner in the above-entitled matter was arrested by a United States Marshal, was unconstitutional, void and of no effect, in that said section purported and attempted to deprive the said Wong Quan of his liberty without due process of law, in violation of the Fifth Amendment of the Constitution of the United States, in this, that under its provisions the said Wong Quan being a Chinese laborer, was entitled to remain, and was, therefore, lawfully within the United States, was deemed and adjudged without a trial by jury and without any preliminary hearing before any United States Judge, United States Commissioner or other Magistrate, State or Federal, to be unlawfully within the United States from and because of this fact alone, to wit: That he was found within the jurisdiction of the United States without the certficate of residence required by said sixth section after the expiration of one year from the passage of said Act of May 5, 1892, and was thereupon arrested without warrant by the Marshal of the United States in and for the Southern District of New York, taken before a United States Judge and ordered by said Judge to be deported from the United States.

SECOND. That the said Circuit Court of the United States erred in not holding, adjudging and determining that the sixth section of the said Act of Congress, approved on the 5th day of May, 1892, was unconstitutional, void and of no effect, for the further reason that it provides that the said Wong Quan and all other Chinese laborers who shall be found after the expiration of one year from the 5th day of May, 1892, within the jurisdiction of the United States without the certificate of residence required by said 6th section of said Act of Congress, and arrested by any one of certain specified officers of the

United States Government, may be taken by such officer before a United States Judge and ordered by said Judge to be deported from the United States without any trial by a jury and without any opportunity to be heard by any United States Judge, United States Commissioner or other Magistrate, State or Federal, upon the merits of his or their case or upon any point, except upon the question as to whether they or any of them were unable to procure said certificate of residence by reason of accident, sickness or other unavoidable cause, or had lost his or their said certificate of residence, by and because of which said provisions said 6th section of said Act of Congress purports and attempts to deprive the said Wong Quan and other Chinese laborers who are entitled to remain in, and are lawfully within, the United States, of their liberty without due process of law and in violation of the Fifth Amendment of the Constitution of the United States.

THIRD. That the said Circuit Court of the United States erred in not holding, adjudging and determining that the said 6th section of said act was unconstitutional, void and of no effect in and because it attempted and purported to deprive the said Wong Quan of his property without due process of law in violation of the Fifth Amendment of the Constitution of the United States, in this, that by reason of the extraordinary and summary procedure enacted by said section, it was provided that he and all other Chinamen arrested under said section should be, immediately upon their arrest, deported out of the country without any opportunity to arrange or dispose of their property interests therein, and thereby forfeiting and losing all their money, property and interests in the United States.

FOURTH. That the said Circuit Court of the United States erred in not holding, adjudging and determining that the said sixth section of said Act of May 5th,

1892, was unconstitutional and void and of no effect, for the further reason that, by its provisions, it attempts to inflict upon the petitioner herein a cruel and unusual punishment, in violation of the Eighth Amendment of the Constitution of the United States, in that it provides that the said Wong Quan, though entitled to remain in, and lawfully within the United States, shall be deported in a summary manner from the United States, as a punishment for the offense of failing to apply for the certificate of residence required by said sixth section of said Act of May 5th, 1892.

FIFTH. That the said Circuit Court of the United States erred in not holding, adjudging and determining that the said sixth section of the said Act of May 5th, 1892, was unconstitutional, void and of no effect, in that the duty imposed therein upon a United States Judge and upon a United States Court was not of a judicial nature,and formed no part of the judicial power, which by the Constitution may be vested in the Courts of the United States, and in that it attempts to vest judicial power in the Collector of Internal Revenue, and in that it attempts to vest judicial power in a United States Judge and not in any Court of the United States, and in that the judicial power is attempted to be extended by the sixth section of the act to what is not a case arising under the Constitution and laws of the United States, contrary to the Third Article of the Constitution.

SIXTH. That the said Circuit Court erred in not holding, adjudging and determining that the said sixth section of said act was in violation of the various treaties between the United States of America and the Chinese Empire, and therefore void and of no effect.

SEVENTH. That the said Circuit Court erred in not holding, adjudging and determining that the said sixth section of said act was unconstitutional, void and of no

effect in that the same was a bill of attainder and therefore in violation of subdivision three, section nine, article one, of the Constitution.

EIGHTH. That the said Circuit Court erred in not holding, adjudging and determining that the said sixth section of said act was unconstitutional, void and of no effect in that the same was in violation of the Fourth, Fifth and Sixth Amendments to the Constitution of the United States.

NINTH. That the said Circuit Court of the United States erred in not holding, adjudging and determining that the said 6th section of the said Act of May 5th. 1892, was unconstitutional, void and of no effect for this reason that there is no power given to Congress by the Constitution, and that there is no power in Congress, by reason of any inherent power of sovereignty, to pass an act removing from the United States a friendly alien resident.

TENTH. That the said Circuit Court of the United States erred in not holding, adjudging and determining that the said sixth section of said Act of May 5th, 1892, was an attempt on the part of the Congress of the United States to enact legislation which it has no power to enact, either by any of the express powers conferred upon it by the Constitution or by any of the amendments thereto, or by any incidental power which may be exercised in their behalf.

ELEVENTH. That the said Circuit Court of the United States erred in not holding, adjudging and determining that the Marshal of the United States in and for the Southern District of New York had no authority to arrest the said Wong Quan or to restrain him of his liberty.

TWELFTH. That the Circuit Court of the United

States in and for the Southern District of New York erred in not discharging the said Wong Quan upon the return of the writ of *habeas corpus* heretofore issued herein and erred in dismissing said writ.

THIRTEENTH. That the said Circuit Court erred in remanding the said Wong Quan to the custody of the said United States Marshal.

Wherefore, the said Wong Quan prays that the order of the Circuit Court in and for the Southern District of New York, entered in the office of the Clerk of said Court on the 6th day of May, 1893, dismissing the writ of *habeas corpus* heretofore issued herein, be reversed, and that the said Circuit Court of the United States be ordered to enter an order directing the discharge of the said Wong Quan.

JOSEPH H. CHOATE,
J. HUBLEY ASHTON,
THOS. D. RIORDAN,
Attorneys for Petitioner and Appellant.

[ENDORSED:] Supreme Court of the United States. In the Matter of the Application of Wong Quan for a Writ of *Habeas Corpus*. Wong Quan, Appellant and Plaintiff in Error, vs. The United States of America and John W. Jacobus, individually and as the Marshal of the United States in and for the Southern District of New York, Respondents and Defendants in Error. Assignment of Errors. Joseph H. Choate, J. Hubley Ashton, Thos. D. Riordan, Attorneys for Petitioner and Appellant. Due service of a copy of the within paper is hereby admitted. May 6th, 1893. Edward Mitchell, U. S. Atty. U. S. Circuit Court. Filed May 6th, 1893. John A. Shields, Clerk.

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Application of WONG QUAN for a Writ of *Habeas Corpus*.

Wong Quan, the petitioner in the above-entitled proceeding, feeling himself aggrieved by the order heretofore entered herein and filed in the office of the Clerk of the Circuit Court of the United States in and for the Southern District of New York on the 6th day of May, 1893, dismissing the writ of *habeas corpus* theretofore granted and remanding the said Wong Quan to the custody of John W. Jacobus, the Marshal of the United States in and for the Southern District of New York, doth hereby appeal from the said order of said Circuit Court of the 6th day of May, 1893, to the Supreme Court of the United States, and he prays that this, his appeal, may be allowed, and that a transcript of the record and proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

New York City, May 6th, 1893.

JOSEPH H. CHOATE,
Attorney for the Petitioner and Appellant,
52 Wall Street,
New York City.

And now, to wit, on this, the 6th day of May, 1893, it is ordered that the appeal in the above-entitled proceeding be allowed as prayed for.

E. HENRY LACOMBE.

[ENDORSED :] U. S. Circuit Court, Southern District of New York. In the Matter of the Application of Wong Quan for a Writ of *Habeas Corpus*. Appeal to Supreme Court of the United States from the Order Dismissing the Writ of *Habeas Corpus*. Joseph H. Choate, Atty. for Petitioner, 52 Wall Street, New York City. Due service of copy of within paper is hereby admitted. New York, May 6th, 1893. Edwd. Mitchell, U. S. Atty. U. S. Circuit Court. Filed May 6th, 1893. John A. Shields, Clerk.

At a Stated Term of the Circuit Court of the United States in and for the Southern District of New York, in the Second Circuit, held at the Court Rooms thereof in the United States Court and Post-office Building in the City of New York, on the 6th day of May, 1893.

Present—HONORABLE E. HENRY LACOMBE, Circuit Judge.

IN THE MATTER

OF

The Application of WONG QUAN for a Writ of *Habeas Corpus*.

Upon all the papers and proceedings herein, and in pursuance of the provisions of Section 765 of the United States Revised Statutes, and upon motion of Maxwell Evarts, the attorney for the petitioner in the above-entitled proceeding, it is

Ordered, that a transcript of the petition, writ of *habeas corpus*, return thereto and other proceedings herein be sent up to the United States Supreme Court by the Clerk of this Court on or before Wednesday, the 10th day of May, 1893, and that said day be and the same hereby is made the return day of the appeal heretofore allowed herein.

E. HENRY LACOMBE.

[ENDORSED:] U. S. Circuit Court, Southern District of New York. In the Matter of the Application of Wong Quan for a Writ of *Habeas Corpus*. Order for Return to U. S. Supreme Court. Maxwell Evarts, Attorney for Petitioner, 23 Broad Street, New York City. Due service of a copy of the within paper is hereby admitted May 6th, 1893. Edwd. Mitchell, U. S. Atty. U. S. Circuit Court. Filed May 6th, 1893. John A. Shields, Clerk.

SUPREME COURT OF THE UNITED STATES.

In the Matter of The Application of Wong Quan for a Writ of *Habeas Corpus*.	
Wong Quan, Appellant and Plaintiff in Error, vs. The United States of America and John W. Jacobus, individually and as the Marshal of the United States in and for the Southern District of New York, Respondents and Defendants in Error.	Joinder in Error

And afterwards, to wit, on the 10th day of May, 1893, the said defendants in error by Edward Mitchell, their attorney, come here into Court and say that there is no error either in the record or proceedings aforesaid or in the giving of the order aforesaid.

And they pray that the said Supreme Court, before the Justices thereof, now here, may proceed to examine as well the record and proceedings aforesaid above assigned for error, and that the order aforesaid, in form aforesaid given, may be in all things affirmed, &c.

Edwd. Mitchell,
United States Attorney and Attorney for Defendants in Error.

[ENDORSED:] Supreme Court of the United States In the Matter of the Application of Wong Quan for a Writ of *Habeas Corpus*. Wong Quan, Appellant and Plaintiff in Error, vs. The United States of America and John W. Jacobus, individually and as the Marshal of the United States in and for the Southern District of New York, Respondents and Defendants in Error. Joinder in Error. Edward Mitchell, United States Attorney, Atty. for Defts. in Error. Due service of a copy of the within paper is hereby admitted May 6th, 1893. Joseph H. Choate, Atty. for Petnr. U. S. Circuit Court. Filed May 6th, 1893. John A. Shields, Clerk.

UNITED STATES CIRCUIT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Application of WONG QUAN for a Writ of *Habeas Corpus*.

KNOW ALL MEN BY THESE PRESENTS:

That we, Wong Quan, residing at No. 5 Mott street, in the City of New York, and Kiliaen Van Rensselar, residing at 134 West 79th Street, in the City of New York, are held and firmly bound unto the United States of America, and John W. Jacobus, individually and as the Marshal of the United States in and for the Southern District of New York, in the sum of five hundred dollars, to be paid to the said obligees; for the payment of which well and truly to be made

we bind ourselves, and each of us, and our and each of our heirs, executors and administrators jointly and severally firmly by these presents.

Sealed with our seals and dated the 6th day of May, in the year of our Lord one thousand eight hundred and ninety-three.

WHEREAS, the above-named Wong Quan has presented an appeal to the Supreme Court of the United States to reverse the order dismissing the writ of *habeas corpus* herein, heretofore made in the above-entitled proceeding on the 6th day of May, 1893, by the Circuit Court of the United States, in and for the Southern District of New York, and duly entered on said day in the office of the Clerk of said Court.

Now, therefore, the condition of this obligation is such that if the above-named Wong Quan shall prosecute said appeal to effect and answer all damages and costs, if he fail to make his appeal good, then this obligation shall be void; otherwise the same shall remain in full force and virtue.

his
WONG ⋈ QUAN. [L. S.]
mark
KILIAEN VAN RENSSELAER. [L. S.]

Sealed and delivered and taken and acknowledged this 6th day of May, 1893, before me.

JOHN A. SHIELDS,
U. S. Commissioner,
S. D. N. Y.

UNITED STATES OF AMERICA,
Southern District of New York, } ss. :
CITY AND COUNTY OF NEW YORK,

KILIAEN VAN RENSSELAER, being duly sworn, deposes and says that he is worth the sum of one thousand dollars over and above his just debts and liabilities.

KILIAEN VAN RENSSELAER.

Sworn to before me this 6th day of May, 1893,

JOHN A. SHIELDS,
U. S. Commissioner,
S. D. N. Y.

UNITED STATES OF AMERICA,
Southern District of New York, } ss. :
CITY AND COUNTY OF NEW YORK,

On this 6th day of May, one thousand eight hundred and ninety-three, before me personally came Fong Yue Ting and Kiliaen Van Rensselaer, to me known, and known to me to be the individuals mentioned and described in the foregoing instrument, and they severally acknowledged to me that they executed the same.

JOHN A. SHIELDS,
U. S. Commissioner,
S. D. N. Y.

[ENDORSED:] U. S. Circuit Court, Southern District of New York. In the Matter of the Application of Wong Quan for a Writ of *Habeas Corpus*. Bond on Appeal to the Supreme Court of the United States. Maxwell Evarts, Attorney for Petitioner, 23 Broad Street, New York City. U. S. Circuit Court. Filed May 6th, 1893. John A. Shields, Clerk.

UNITED STATES OF AMERICA, ss.:

To the UNITED STATES OF AMERICA and JOHN W. JACOBUS, individually and as the Marshal of the United States in and for the Southern District of New York, GREETING:

You are hereby cited and admonished to be and appear at the United States Supreme Court, to be holden at Washington, in the District of Columbia, on Wednesday, the 10th day of May, one thousand eight hundred and ninety three, pursuant to an appeal taken, allowed and filed in the office of the clerk of the Circuit Court of the United States in and for the Southern District of New York, in the Second Circuit, wherein Wong Quan is appellant, and the United States of America and John W. Jacobus, individually and as the Marshal of the United States in and for the Southern District of New York, are respondents, to show cause, if any there be, why the order in said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Dated New York City, May 6th, 1893.

E. H. LACOMBE.

[ENDORSED:] United States Supreme Court. Wong Quan, Appellant and Plaintiff in Error, vs. United States of America and John W. Jacobus, individually and as the Marshal of the United States in and for the Southern District of New York, Respondents and Defendants in error. Citation. Joseph H. Choate, Attorney for Appellant, 52 Wall Street, New York City. Due service of a copy of the within paper is hereby admitted. May 6th, 1893. Edward Mitchell, U. S. Atty. U. S. Circuit Court. Filed May 6th, 1893. John A. Shields, Clerk.

UNITED STATES OF AMERICA,
Southern District of New York, } ss.:

I, JOHN A. SHIELDS, Clerk of the Circuit Court of the United States in and for the Southern District of New York, in the Second Circuit, do hereby certify that the foregoing pages, numbered from one to thirty, inclusive, contain a true and complete transcript of the record and proceedings had in said Court in the matter of the application of Wong Quan for a writ of *habeas corpus*, Wong Quan, appellant and plaintiff in error, against The United States of America and John W. Jacobus, individually and as Marshal of the United States in and for the Southern District of New York, respondents and defendants in error, as the same remain of record and on file in said office.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed at the City of New York, in the Southern District of New York, in the Second Circuit, this sixth day of May, in the year of our Lord one thousand eight hundred and ninety-three, and of the Independence of the United States the one hundred and seventeenth.

Seal of U. S. Circuit Court in and for the Southern District of New York.

JOHN A. SHIELDS,
Clerk.